

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF,)
)
E. GIMBEL,) OTA NO. 21027226
)
)
 APPELLANT.)
)
)
 _____)

TRANSCRIPT OF ELECTRONIC PROCEEDINGS

State of California

Tuesday, July 26, 2022

Reported by:
ERNALYN M. ALONZO
HEARING REPORTER

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APPEARANCES:

Panel Lead: ALJ MIKE LE

Panel Members: ALJ DANIEL CHO
ALJ JOHN JOHNSON

For the Appellant: MICHAEL SY

For the Respondent: STATE OF CALIFORNIA
FRANCHISE TAX BOARD
CHRISTOPHER COOK
ERIC YADAO

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I N D E X

E X H I B I T S

(Appellant's Exhibits 1 was received into evidence at the prehearing conference.)

(Appellant's Exhibit 2 was received into evidence at page 6.)

(Department's Exhibits A-G were received into evidence at the prehearing conference.)

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California; Tuesday, July 26, 2022

2:35 p.m.

JUDGE LE: We are opening the record in the Appeal of Gimbel. This matter is being held before the Office of Tax Appeals. The OTA Case Number is 21027226. Today's date is Tuesday, July 26th, 2022, and the time is 2:35 p.m. This hearing is being held -- being conducted electronically with the agreement of the parties.

Today's hearing is being heard by a panel of three Administrative Law Judges. My name is Mike Le, and I will be the lead judge. Judge Daniel Cho and Judge John Johnson are the other members of this tax appeals panel. Originally Judge Amanda Vassigh was assigned to this panel, but due to a scheduling conflict Judge Johnson has replaced her.

All three judges meet after the hearing and produce a written opinion as equal participants. Although the lead judge will conduct the hearing, any judge on this panel may ask questions or otherwise participate to ensure we have all the information needed to decide this appeal.

Now for the parties' introductions, will the parties please state their name and who they represent, starting with Respondent.

MR. COOK: This is Chris Cook. I'm a Tax

1 Counsel III with the Franchise Tax Board representing
2 Respondent.

3 MR. YADAO: Good afternoon. This is Eric Yadao
4 with the Franchise Tax Board also.

5 JUDGE LE: This is Judge Le. Thank you both.

6 Turning now for Appellant, please state your name
7 and who you represent.

8 MR. SY: This is Michael Sy representing
9 Evangeline Gimbel.

10 JUDGE LE: Thank you, Mr. Sy.

11 This is Judge Le. Let's move on to my minutes
12 and orders. As discussed with the parties at the
13 prehearing conference on July 6th, 2022, and notated in my
14 minutes and orders, the issue in this matter is whether
15 Appellant has established reasonable cause to abate the
16 late-payment penalty. No witnesses will testify at this
17 hearing for either party.

18 Appellant's Exhibit 1 was entered into the record
19 in my minutes and orders. After the prehearing conference
20 Appellant submitted an additional exhibit, which is the
21 letter signed by Appellant dated July 11, 2022.
22 Respondent did not object to this exhibit, so this exhibit
23 will be entered into the record as Exhibit 2.

24 (Appellant's Exhibit 2 was received in
25 evidence by the Administrative Law Judge.)

1 Respondents Exhibits A through G were also
2 entered into the record in my minutes and orders. This
3 oral hearing will begin with Appellant's presentation for
4 up to 10 minutes. Does anyone have any questions before
5 we begin?

6 Mr. Cook, any questions before we begin?

7 MR. COOK: This is Chris Cook. We also submitted
8 additional Exhibits H through J subsequent to the
9 prehearing conference.

10 JUDGE LE: Give me just one moment here. Do you
11 know the date you submitted that?

12 MR. COOK: Let me -- those were sent by email on
13 July 8th, 2022.

14 JUDGE LE: Unfortunately, it does not look like
15 we have that in our record. Can you resubmit that
16 document -- those documents?

17 MR. COOK: Of course.

18 JUDGE LE: Okay. At this point let's take a
19 five-minute break so we can allow the FTB to resend those
20 exhibits that they mentioned. If everybody can mute your
21 microphone and stop your video but do not sign out of
22 Webex.

23 (There is a pause in the proceedings.)

24 JUDGE LE: We are now going back on the record.
25 Okay. We're now back on the record.

1 As I mentioned earlier, this oral hearing will
2 begin with Appellant's presentation for up to 10 minutes.
3 I just want to check one more time. Any questions from
4 either party before we begin with Appellant's
5 presentation?

6 Franchise Tax Board, any questions before we
7 begin?

8 MR. COOK: This is Chris Cook. No questions,
9 Judge.

10 JUDGE LE: Okay. And, Mr. Sy, any questions
11 before we begin?

12 MR. SY: Michael Sy. No questions, Judge.

13 JUDGE LE: Okay. And I'm just going to say this
14 one more time because I don't think I said it on the
15 record. We will allow Franchise Tax Board five days -- we
16 will keep the record open after this hearing and allow the
17 Franchise Tax Board five days to submit their exhibits.
18 And then after that, Appellant will have 10 days to file
19 an objection if they want to.

20 Okay. So now we're going to proceed with
21 parties' arguments.

22 Mr. Sy, you have up to 10 minutes starting at
23 2:58 p.m. Please proceed.

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1 JUDGE LE: This is Judge Le. Thank you.
2 Let me turn to the panel to see if they have any
3 questions for Appellant. Judge Cho, any questions for
4 Appellant?
5 JUDGE CHO: This is Judge Cho. I don't have any
6 questions at this time. Thank you.
7 JUDGE LE: Thank you, Judge Cho.
8 This is Judge Le. Turning to Judge Johnson. Do
9 you have any questions for Appellant?
10 JUDGE JOHNSON: This is Judge Johnson. No
11 questions. Thank you.
12 JUDGE LE: This is Judge Le. Thank you.
13 Now it's Respondent's turn for their
14 presentation.
15 Mr. Cook, you have up to 10 minutes, starting at
16 3:00 p.m. Please proceed. Thank you.
17 MR. COOK: Thank you, Judge Le.
18
19 PRESENTATION
20 MR. COOK: The issue in this case does not
21 concern whether Appellant filed her tax return late. The
22 only issue in this case is whether Appellant has
23 demonstrated reasonable cause to abate the penalties
24 imposed for not completely paying her tax liability when
25 it was due.

1 The following facts are not in dispute. One,
2 because of the Covid pandemic, the deadline for filing the
3 2019 returns and paying 2019 income tax was delayed to
4 July 15th, 2020.

5 Two, Appellant's 2019 return was received on
6 July 14, one day before the deadline. It was timely
7 filed.

8 Three, the return reported an unpaid tax due of
9 approximately \$8,300. And finally, this tax due was not
10 paid until October after FTB sent a notice to Appellant.
11 These facts are not in dispute, so late-payment penalties
12 were properly imposed.

13 Now, late-payment penalties may be abated for
14 showing a reasonable cause. This requires evidence that
15 despite her exercise of ordinary care and prudence,
16 Appellant was nonetheless prevented from making a tax
17 payment on time. Appellant has explained that unique
18 circumstances caused by the Covid pandemic caused business
19 complications to her medical practice, which in turn
20 caused her to not timely pay her tax liability.

21 But this explanation is tantamount to Appellant
22 saying that she sacrificed the timeliness of one aspect of
23 her affairs to pursue others. Under precedent, taxpayers
24 must bear the consequences for making this kind of choice.
25 In other words, under the law, focusing on business

1 concerns to the detriment of paying attention to tax
2 responsibilities does not create reasonable cause to abate
3 the tax penalties.

4 But before I close, I must reemphasize that while
5 Appellant did not timely pay her tax liability, she was
6 still able to file her return that had the exact same
7 deadline as her payment. Returning, which is going to --
8 which is included in Respondent's A, also shows that the
9 bulk of her income was from an S corporation that
10 presumably is her medical practice business.

11 This S corporation's return is included in
12 Respondent's Exhibit H -- which you'll be receiving -- and
13 shows that Appellant is both the sole 100 percent
14 shareholder and signer of the return as president of the
15 corporation. This S corporation's return was also timely
16 filed on July 14th just like her personal return. And the
17 S corporation also timely paid its tax on July 14th.

18 Now, it does not require a leap to imagine that
19 the efforts necessary to prepare the S corporation's
20 return along with her personal return must be a
21 significantly more complicated undertakings than the act
22 of making a payment for the amount shown on the return.
23 So it's not clear how circumstances conspired to prevent
24 Appellant from paying her personal income tax, but at the
25 same time, the same circumstances did not prevent her from

1 preparing and filing the returns that had the exact same
2 deadline as the payment.

3 If reasonable cause did exist for Appellant to
4 not pay on time, then surely the same circumstances should
5 have caused her to not timely file the corporation's
6 return or her personal return or timely pay the
7 corporation's tax liability. Since it's not clear as to
8 how it is possible to timely prepare and file two tax
9 returns and make the corporation's payment, yet
10 simultaneously impossible to timely pay the personal
11 income tax, Respondent asks the OTA to determine that
12 reasonable cause does not exist to abate the late-payment
13 penalties in this case.

14 Thank you, and I'm happy to answer any questions.

15 JUDGE LE: Thank you, Mr. Cook.

16 This is Judge Le. Let me turn to my panel again.

17 Judge Cho, do you have any questions for
18 Respondent?

19 JUDGE CHO: This is Judge Cho. No questions.

20 Thank you.

21 JUDGE LE: Thank you.

22 Judge Johnson, any questions?

23 JUDGE JOHNSON: This is Judge Johnson. No
24 questions. Thank you.

25 JUDGE LE: Thank you.

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Thank you.

JUDGE LE: Thank you.

Judge Johnson, any final questions for either party?

JUDGE JOHNSON: This is the Judge Johnson. No questions. Thank you.

JUDGE LE: This is Judge Le. I also do not have any questions for either party, so I believe we're ready to conclude this hearing.

Thank you everyone for attending today. The record will be held open for the FTB to submit additional exhibits within 5 days. Appellant will then have 10 days after that to object, if you choose to do so. We will issue an order after this hearing to confirm this information.

Thank you, again, everyone for coming in today. Today's hearing in the Appeal of Gimbel is now adjourned.

(Proceedings adjourned at 3:06 p.m.)

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HEARING REPORTER'S CERTIFICATE

I, Ernalyne M. Alonzo, Hearing Reporter in and for the State of California, do hereby certify:

That the foregoing transcript of proceedings was taken before me at the time and place set forth, that the testimony and proceedings were reported stenographically by me and later transcribed by computer-aided transcription under my direction and supervision, that the foregoing is a true record of the testimony and proceedings taken at that time.

I further certify that I am in no way interested in the outcome of said action.

I have hereunto subscribed my name this 4th day of August, 2022.

ERNALYN M. ALONZO
HEARING REPORTER